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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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# TRANSMITTAL FORM

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Total Number of Pages in This Submission (including this sheet)

Application Number	10/666,237
Filing Date	September 18, 2003
First Named Inventor	Mark R. Miskin
Group Art Unit	3671
Examiner Name	Novosad, Christopher J.
Attorney Docket No.	3462.MISK.PT

	ENCLOSURES (check all that apply)					
□ Amendment / Response □ After Final □ Affidavits/declaration(s) □ Appeal Communication: □ Appeal Notice □ Appeal Brief □ Reply Brief □ Assignment with Cover Sheet □ Certified Copy of Priority Document(s)	□ Extension of Time Request	□ Maintenance Fee Transmittal				
□ Check in the amount of \$     □ Credit card authorization in the amount of \$     □ Declaration & Power of Attorney     □ Drawings sheets     □ Formal □ Informal	Remarks  ATURE OF APPLICANT, ATTORNEY OR A	AGENT				
Attorney for Applicant Bretto MORI 136 S Salt L	n L. Crockett, Registration No. 44,632 RISS O'BRYANT COMPAGNI, P.C. outh Main Street, Suite 700 ake City, Utah 84101 478-0071 telephone; (801) 478-0076					
Signature		Date 3/16/07				
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Signature	In T	Date 3/16/07				



### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark R. Miskin

**SERIAL NO.:** 

10/666,237

FILING DATE:

September 18, 2003

TITLE:

SYSTEMS AND METHODS FOR

CONTROLLING THE REMOVAL

OF SOIL FROM AN EARTH

MOVING SCRAPER

**ART UNIT:** 

3671

**EXAMINER:** 

Christopher J. Novosad

DOCKET

3462.MISK.PT

NO.:

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Bretton L. Crockett

3/16/07

#### REQUEST FOR RECONSIDERATION OF NOTICE OF ABANDONMENT

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Pursuant to MPEP § 711, Applicant requests the Notice of Abandonment mailed March 7, 2007 be withdrawn and the case advanced for examination for the reasons set forth below.

The Notice of Abandonment, mailed March 7, 2007, sets forth that the application is abandoned in view of Applicant's failure to timely file a proper reply to the Office letter mailed August 29, 2006, as no reply to such Office letter has been received by the Office. The Office Action mailed August 29, 2006 required a response be provided within three months and further indicated extensions of time were available under the provisions of 37 CFR 1.136(a).

On February 28, 2007, Applicant filed a responsive Amendment accompanied by a Petition for Extension of Time Under 37 CFR 1.136(a) and the appropriate fee, copies of which are provided herewith as Exhibits A and B, respectively. These were received by the Office on March 2, 2007 as evidenced by the copy of the stamped return postcard

Commissioner for Patents March 16, 2007 Page 2

receipt and the Image File Wrapper Table of Contents printed from the PAIR system on March 16, 2007, and attached hereto as Exhibits C and D, respectively.

As a proper response to the Office Letter was timely filed, it is requested the Notice of Abandonment be withdrawn and the case be advanced for examination. Should the Office determine that additional issues remain which might be resolved by a telephone conference, the Office is respectfully invited to contact Applicant's undersigned attorney.

Respectfully Submitted,

Bretton L. Crockett

Reg. No. 44,632

Morriss O'Bryant Compagni 136 South Main Street, Suite 700

Salt Lake City, Utah 84101 Telephone (801) 478-0071

Facsimile (801) 478-0076







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APPLICANT:

Mark R. Miskin

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Bretton L. Crockett

2/28/07 Date of Deposit

#### **AMENDMENT**

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Responsive to the Office Action mailed August 29, 2006, please amend the above-referenced application as follows. This Amendment is accompanied by a petition for extension of time, together with the appropriate fee.

Amendments to the Claims begin on page 2 of this paper.

Remarks begin on page 6 of this paper.

#### IN THE CLAIMS:

Claims 9, 19, 20, 21 and 23 have been amended. Claims 1-8, 17, 18 and 24-36 were withdrawn from consideration as directed to non-elected groups and are accordingly canceled herein. All cancellations and amendments are made without prejudice. Please note that all claims currently pending and under consideration in the referenced application are shown below. Please enter these claims as amended. This listing of claims will replace all prior versions and listings of claims in the application.

### Listing of Claims:

Claims 1 through 8. (Canceled).

- 9. (Currently Amended) An earth moving or ground leveling apparatus comprising:
- a frame having opposing sides;
- a cutting blade attached to the frame between the opposing sides;
- at least two ground engaging wheels supporting the frame;
- a bucket having a floor and a pair of side walls;
- an apron for holding soil in the bucket, the apron disposed perpendicular to the pair of sidewalls and disposed across the front of the bucket;
- a hydraulic system for imparting movement to the bucket and the apron comprising:
  - a first valve interconnected in the hydraulic system for controlling movement of the bucket and the apron; and
  - a second valve interconnected in the hydraulic system for preventing movement of the bucket or the apron <u>such that the bucket can be locked in a desired position</u> <u>regardless of a height of the cutting blade.</u>
- 10. (Original) The earth moving or ground leveling apparatus of claim 9, wherein the first valve comprises a sequence valve for sequentially moving the bucket and the apron to one of a soil scraping, retaining or expelling position where the bucket

is actuated only after the apron is fully moved.

- 11. (Original) The earth moving or ground leveling apparatus of claim 9, wherein the second valve is configured to be activated independently from the hydraulic system.
- 12. (Original) The earth moving or ground leveling apparatus of claim 9, further comprising an electronic control means for activating the second valve.
- 13. (Original) The earth moving or ground leveling apparatus of claim 9, wherein the bucket can be locked in a position and the apron can be independently actuated to control the amount of soil entering or leaving the bucket.
- 14. (Original) The earth moving or ground leveling apparatus of claim 9, wherein the hydraulic system further comprises:
- a first hydraulic cylinder for moving the bucket;
- a second hydraulic cylinder for moving the apron;
- at least one first supply line operatively connecting the first valve to the first hydraulic cylinder; and
- at least one second supply line operatively connecting the first valve to the second hydraulic cylinder.
- 15. (Original) The earth moving or ground leveling apparatus of claim 13, wherein the second valve is operatively connected to the at least one first supply line or the at least one second supply line.
- 16. (Original) The earth moving or ground leveling apparatus of claim 12, further comprising:
- a tongue attached to the frame and configured for attachment of the earth moving or

ground leveling apparatus to a tractor, wherein the electronic control means is associated with the tractor.

Claims 17 and 18. (Canceled).

- 19. (Currently Amended) The A method according to claim 16, wherein the for controlling movement of a bucket and an apron of an earth moving apparatus, the method comprising:
- providing the earth moving apparatus comprising the bucket for storing soil, the apron for holding the soil in the bucket, and a cutting blade for cutting soil to be stored in the bucket;
- <u>a second hydraulic system comprising a first hydraulic cylinder for moving the bucket,</u>

  <u>a second hydraulic cylinder for moving the apron and a</u> first valve <del>comprises</del>

  <u>comprising</u> a sequence valve <u>for controlling the movement of the bucket and the apron;</u>

activating the hydraulic system to initiate movement of the bucket and the apron; and, impeding the movement of the bucket or the apron with a second valve, such that the bucket can be locked in a desired position regardless of a height of the cutting blade.

- 20. (Currently Amended) The method according to claim 16 19, wherein impeding the movement of the bucket or the apron comprises activating an electronic means.
- 21. (Currently Amended) The method according to claim 16 19, wherein activation of the hydraulic system causes the bucket and the apron to move in sequence.
- 22. The method according to claim 19, wherein the impeded movement of the bucket or the apron does not affect the movement of the unimpeded bucket or apron.

Commissioner for Patents February 28, 2007 Page 5

23. (Currently Amended) The method according to claim 16 19, wherein impeding the movement of the bucket or the apron comprises interrupting a flow of hydraulic fluid to the first hydraulic cylinder or the second hydraulic cylinder.

Claims 24 through 36. (Canceled).

#### REMARKS

The Office Action mailed August 29, 2006 has been received and reviewed. Claims 1 through 36 were currently pending in the application. Claims 1-8, 17, 18 and 24-36 were withdrawn from consideration as directed to non-elected groups and are accordingly canceled herein. Accordingly, claims 9 through 16 and 19 through 23 are currently under consideration and each stands rejected. Claims 9, 19, 20, 21 and 23 have been amended. Reconsideration of the application as amended herein is respectfully requested.

#### 35 U.S.C. § 102(b) Anticipation Rejections

Claims 9 through 16 and 19 through 23 were rejected in the Office Action as assertedly being anticipated under 35 U.S.C. § 102(b) by U.S. Patent 3,651,589 to Reynolds. ("Reynolds"). Applicant respectfully submits that, as amended, such claims define over Reynolds.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Brothers v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The Office Action merely cites Reynolds Figs. 9-13 as showing the configuration of the valves and Figs. 1-8 as showing the apparatus.

Reynolds is directed to an earth moving scraper with hydraulic systems that include means to prevent various "components from moving between their alternative positions in other than a desired sequence." (Reynolds, Abstract). As explained in its specification, the details of the Reynolds hydraulic systems require movement of the components in a specific sequence. Specifically, the Reynolds system does not allow adjustment of the bucket position when the cutting blade is deployed, stating: "Thus, in accordance with the objects of this invention, the bucket must be lowered to loading position before the blade can be lowered against the surface of the soil. (Reynolds column 5, lines 66-68)." Reynolds further explains that "Thus, and again in accordance

with one of the objects of this invention, the bucket can be tilted only after the blade has been raised." (Reynolds, column 6, lines 34-36). Reynolds then again states that "Thus, the operator is assured that the bucket will not be tilted into unloading position until the frame and thus the blade has been fully raised, because it is only when the actuators 34 are fully retracted that pressure fluid from line 50 and within bypass line 69 can open the check valve 62. (Column 6, lines 46-52)."

As amended, claim 1 includes the elements of "a cutting blade attached to the frame between the opposing sides" and "a second valve interconnected in the hydraulic system for preventing movement of the bucket or the apron such that the bucket can be locked in a desired position regardless of a height of the cutting blade."

Similarly, amended claim 19 includes the elements of "the bucket can be locked in a desired position regardless of a height of the cutting blade." Support for these claim amendments may be found in the as-filed specification at paragraphs [0031], [0040] [0044] and [0052].

Applicant respectfully requests that as amended claims 9 and 19 contain elements not disclosed in Reynolds that such claims, together with the claims dependent therefrom, be allowed.

Commissioner for Patents February 28, 2007 Page 8

#### CONCLUSION

All pending claims are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Office determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned attorney.

Respectfully Submitted,

Bretton L. Crockett

Reg. No. 44,632

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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

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# TRANSMITTAL FORM

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Total Number of Pages in This Submission (including this sheet)

Application Number 10/666,237

Filing Date September 18, 2003

First Named Inventor Mark R. Miskin

Group Art Unit 3671

Examiner Name Novosad, Christopher J.

Attorney Docket No. 3090-5854US

	ENCLOSURES (check all that apply)						
Amendment / Response	Extension of Time Request3month  Fee Calculation Table □ Information Disclosure Statement □ Form 1449 □ Copies of IDS References □ Issue Fee Transmittal & Advance Order □ Status Inquiry □ Other:    Maintenance Fee Transmittalyear   Missing Parts Response □ Notification of Change of Attorney Address & Docket Number   Return Postcard □ Revocation & Power of Attorney □ Status Inquiry □ Other:						
Attorney for Applicant  Bretton MORRI 136 Soi Salt Lal	L. Crockett, Registration No. 44,632 SS O'BRYANT COMPAGNI, P.C. uth Main Street, Suite 700 se City, Utah 84101 78-0071 telephone; (801) 478-0076 facsimile						
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11-15-2004	Information Disclosure Statement (IDS) Filed	5	Γ	
11-15-2004	NPL Documents	7	C	
02-02-2004	Oath or Declaration filed	3	Γ	
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12-15-2003	Pre-Exam Formalities Notice	2		
09-18-2003	Transmittal of New Application	2	Γ.	
09-18-2003	Specification	20	<b></b>	
09-18-2003	Claims	7		
09-18-2003	Abstract	1	Γ.	
09-18-2003	<u>Drawings</u>	14	Γ	
09-18-2003	Oath or Declaration filed	3		
09-18-2003	Preliminary Amendment	1		
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09-18-2003	Applicant Arguments/Remarks Made in an Amendment	1	Г.	
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09-18-2003	Fee Worksheet (PTO-06)	1	<u></u>	
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